General Pub #3

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

WASHINGTON, D. C., *August 1, 1903.*

OPINIONS OF THE ATTORNEY-GENERAL RELATING TO THE SCOPE AND MEANING OF THE ACT OF JULY 1, 1902, 32, STATUTE 632, PUBLIC 223, REGULATING THE BRANDING OF DAIRY AND FOOD PRODUCTS FOR INTERSTATE COMMERCE.

In order that a correct understanding might be had as to the scope of the law relating to the branding of dairy and food products, the opinion of the Attorney-General was asked concerning certain features of that act. Samples of labels which were used in commercial operations were submitted with the request that an opinion be given as to whether or not they conformed to the provisions of the law. Two separate opinions were asked of the Attorney-General in regard to this law.

First, in the case of a firm, ——— ———, established in one State and dealing in goods which were grown and manufactured in another State, the labels, however, bearing the name and address of the firm in its central place of business, the direct question asked was:

> Is not the label as it stands a distinct statement that the product bearing it is manufactured and prepared in (address of the firm given)?

One particular object of the law appears to be to prevent the utilization of the name of localities which have become noted for the production of a certain food product in connection with other food products of a similar nature made elsewhere.

The second point on which the opinion of the Attorney-General was asked was as follows:

> The question which I desire to propose to you now is, whether, under the provisions of the two acts referred to (Public—No. 158, approved March 3, 1903, regulating the importation of goods, and the act first mentioned above) it will be possible to prevent the misbranding of foreign products. In other words, would the provisions of Public—No. 223, referred to first above, apply to any foreign product entering into interstate commerce, or do they apply only to articles of food of domestic manufacture?

From correspondence conducted with large manufacturing firms, it is evident that they desire at once to conform to the provisions of these laws if they can only be distinctly made known. To this end I have deemed it advisable to publish the decisions of the Attorney-General on these questions, omitting merely the names of the firms specifically referred to, for the information of manufacturers, dealers, and consumers.

JAMES WILSON, 1835-1920
Secretary of Agriculture.

DEPARTMENT OF JUSTICE,
Washington, D. C., June 22, 1903.

The SECRETARY of AGRICULTURE.

SIR: I beg to acknowledge the receipt of your letter of the 11th instant, inclosing one addressed to you by the ——— ——— Company of Milwaukee, Wis., together with two samples of labels which they have submitted for your approval, and in which you say:

> These labels do not seem to fall within either class on which you passed your opinion of September 20. The goods described by these labels purport to be in every respect goods manufactured by the ——— ——— Company. They say in their letter, however, that they purchase all their goods in Iowa.
>
> The question which I desire to propound particularly in this respect is the following: Is not the label of ——— ———, as it stands, a distinct statement that the product bearing it is manufactured and prepared in Wisconsin?

One of the labels considered in the opinion of September 20 (24 Opin., 125) read: "Packed for ——— ——— Company (Limited), wholesale grocers, Shreveport, La." The other omitted the words "Packed for" and "Wholesale grocers," and was in these words: "The ——— Brand Lima Beans, ——— ——— Company (Limited), Shreveport, La." They were held not to come within the act of July 1, 1902, c. 1357 (32 Stats., 632), regulating this subject.

The labels now submitted (which are to be used on canned goods) are substantially alike in form and character. One bears the words "——— ——— Daisy Sugar Corn, ——— ——— Company, Milwaukee, Wis." In the other, "Tip Top" takes the place of the word "Daisy."

Section 1 of the act of July 1, 1902, provides—

> That no person or persons, company or corporation, shall introduce into any State or Territory of the United States or the District of Columbia from any other State or Territory of the United States or the District of Columbia, or sell in the District of Columbia or in any Territory any dairy or food products which shall be falsely labeled or branded as to the State or Territory in which they are made, produced, or grown, or cause or procure the same to be done by others.

Section 2 makes a violation of the act a misdemeanor, punishable by a fine of not less than $500 nor more than $2,000.

In the opinion of September 20, after stating that the mere omission of the place of manufacture can not be said to constitute a violation of the law and that the name of the wholesale dealer on the label or brand is not necessarily a representation that he is the producer or manufacturer of the goods, it was observed: "Of course, if goods are manufactured or produced in one State, and the wholesale dealer is a resident of another, and the label or brand is so worded as to represent the dealer as the producer, there would be a violation of the law if such commodities were introduced into one State from another."

The ——— ——— Company, it is stated, purchase all their goods in Iowa. But the words, "——— Daisy Sugar Corn, ——— ——— Company, Milwaukee, Wis.," clearly imply that the goods referred to are manufactured or prepared by that company in Wisconsin. The general public, unfamiliar with trade practices, would inevitably reach that conclusion. It seems to me, therefore, that these labels come within the statute as above construed. To hold otherwise would be to say that nothing short of direct and positive misrepresentation is inhibited. But that is more than the rule as to the strict construction of penal statutes can be said to require. The act in question aims to prevent the false labeling or branding of food and dairy products entering into interstate commerce. It does not, however, undertake to say what shall be held to constitute a false label or brand. Each case must therefore rest upon its own particular facts. But wherever the natural inference to be drawn from the form or words of a brand or label is contrary to the fact as to the State or Territory in

which the articles referred to are made, produced, or grown, the case would seem to be within both the letter and the spirit of the law.

The papers inclosed are herewith returned as requested.

Respectfully,

P. C. Knox,
Attorney-General.

Department of Justice,
Washington, D. C., June 18, 1903.

The Honorable the Secretary of Agriculture.

Sir: In your note of June 2, 1903, you transmit to me an excerpt from the appropriation act of March 3, 1903 (32 Stat., 1157, 1158), authorizing the Secretary of Agriculture to investigate the adulteration of foods, drugs, and liquors, and forbidding the Secretary of the Treasury to deliver to the consignee any such goods imported from a foreign country which the Secretary of Agriculture has "reported to him to have been inspected and analyzed and found to be dangerous to health, or which are forbidden to be sold, or restricted in sale in the countries in which they are made, or from which they are imported, or which shall be falsely labeled in any respect in regard to the place of manufacture, or the contents of the package," and a copy of the act of July 1, 1902 (32 Stat., 632), in regard to the introduction into any State or Territory or the District of Columbia of any dairy or food products which shall have been falsely labeled or branded as to the State or Territory in which they are made, produced, or grown; and you ask my opinion, in substance, whether, under the provisions referred to, you have jurisdiction or power to prevent the false labeling or branding of such articles imported from foreign countries, after they have passed the custom house and are delivered to the consignees; and whether the act last referred to above applies to such articles imported from foreign countries, or applies only to articles of domestic production.

In reply to your questions, I have the honor to say that, under the provisions of the act of March 3, 1903, to which you refer, the jurisdiction and power of your Department, and that of the Treasury Department, in respect of the matter here considered, end with the delivery of the imported article from the custom house to the owner or consignee, and this provision of the act confers no power to prevent or punish the false labeling or branding of such imported articles after such delivery to the owner or consignee. The whole power there conferred in this respect is to examine such imported articles before such delivery, and to refuse delivery if found to come within the ban of the act. Whatever power there may be to prevent or punish the false labeling or branding of such imported goods after such delivery must be looked for elsewhere.

If the evils of false labeling of such imported articles have reached a magnitude requiring Congressional legislation, it would seem almost, or quite, as important to prevent such false labeling after the articles have passed the custom house, as before; and it would seem that Congress, while having the matter directly in hand, has omitted what would have been very appropriate legislation. But this omission can not be supplied by those called upon to interpret or to administer the law.

But I think the act of July 1, 1902, may be resorted to for partial relief from the evil to which you refer. The first section provides:

> That no person * * * shall introduce into any State or Territory of the United States or the District of Columbia, from any other State or Territory of the United States or the District of Columbia, or sell in the District of Columbia, or in any Territory, any dairy or food products which shall be falsely labeled or branded as to the State or Territory in which they are made, produced or grown, or cause or procure the same to be done by others.

The second section provides the penalty for violation of the act.

The prohibition is of the introduction into any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, and the sale in said District or any Territory of dairy or food products which are "falsely branded or labeled as to the State or Territory in which they are made, produced or grown."

It is important to notice that the prohibition extends to falsely labeled articles introduced or brought from another State or Territory, and is not confined to articles which are made, produced, or grown in some other State or Territory of the United States. If dairy or food products which are falsely labeled or branded as to the State or Territory of their origin, are introduced or brought into one State or Territory or the District of Columbia, from another State or Territory or the District of Columbia, or are sold in any Territory or said District, this is clearly within the prohibition of the act, no matter whether such articles were of domestic or foreign origin. I repeat the section does not confine or purport to confine its prohibition to the introduction of falsely labeled articles made, grown, or produced in this country, but extends it to all such articles introduced from another State or Territory, which are falsely labeled "as to the State or Territory in which they are made, produced or grown."

But, as I have stated above, the act can give only partial relief. For it is plain from the context that the words "State or Territory" refer to a State or Territory of the United States, and can not be extended to include the wider signification of foreign country. Thus, if articles of foreign origin are imported into New York, for example, and thence introduced into another State or Territory with a label or brand falsely stating their origin as to another foreign country, the case would not fall within the provisions of the statute. On the other hand, it is certain that if foreign articles imported into New York are introduced into another State or Territory with a label or brand showing them to be of New York make or growth, such articles would be "falsely labeled or branded as to the State or Territory in which they are made, produced or grown," and such introduction would be within both the letter and the spirit and purpose of the act.

In this respect Congress can interfere only with interstate trade. It can prevent the use of false labels of dairy or food products only when they become objects of commerce between different States or Territories. Hence, the prohibition is confined to articles introduced from one State or Territory into another. But this does not imply, nor is there anything to imply that the prohibition is confined also to articles made, produced, or grown in the State or Territory from which they are introduced, or to articles of domestic origin. It is the use of false labels on dairy and food products in interstate commerce which is prohibited. And if it is interstate commerce, it is quite unimportant whether the articles falsely labeled were of domestic or foreign origin. If an imported article of foreign origin is labeled as of domestic origin, the article is "falsely labeled or branded as to the State or Territory in which it is made, produced or grown;" and if such article, thus falsely labeled, is introduced from one State or Territory into another, or the District of Columbia, it is a violation of the act. Nor does it make any difference in this respect, whether the false label or brand be placed on the article before or after leaving the custom house in a case of foreign importation.

If it were required, a familiar rule of construction might be invoked in support of this interpretation. Statutes should be construed in aid of their manifest purpose and object. And when it is considered that the sole purpose of this act is to prevent the use of false labels or brands of dairy or food products,

when articles of interstate commerce, it is manifest that a construction which limits the prohibition to domestic articles would defeat, rather than aid the purpose of the act. Indeed, the greater and more prevalent evil, in this respect, is not in falsely stating a particular State or Territory as the origin of a domestic article, but is the labeling of a foreign article as the product of some particular State or Territory, or vice versa. This is the more serious and prevalent evil, and in my opinion is as certainly forbidden by the act referred to as is the labeling of an article of one State or Territory as being the product of another.

I am, therefore, of opinion that the act of July 1, 1902, applies not only to domestic articles, but also to those imported from foreign countries which are labeled as being of domestic origin.

Respectfully,

P. C. KNOX,
Attorney-General.

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